

Exhibit 31

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL
5 vs. TRIAL - DAY 9
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 22, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 Monday, the 7th of November, were you asked to
2 return to the property?

3 A. Yes, I was.

4 Q. And were you assigned a specific search team on
5 that day?

6 A. No, on the 7th I worked alone.

7 Q. Okay. Do you remember what you did on the 7th?

8 A. I was sent to specifically pick up a few items.
9 I remember a rifle out of Charles Avery's
10 residence. I took some more weapons out of a
11 vehicle that was parked near the new shop
12 building.

13 Q. The next day, on the 8th, Tuesday, the 8th of
14 November, did you return to the Avery salvage
15 property?

16 A. Yes, I did.

17 Q. And on that date, were you assigned a search
18 team?

19 A. Yes, on that date I was searching with Lieutenant
20 Lenk and Sergeant Colborn.

21 Q. Do you remember where the three of you went to
22 search that day?

23 A. We searched several places including we were sent
24 to Steven Avery's trailer to do a thorough
25 search.

1 Q. During that thorough search, did you have
2 occasion to search the bedroom of Mr. Avery's
3 trailer?

4 A. Yes, we did.

5 Q. And we have heard about a lot of that search, but
6 I'm specifically going to direct your attention
7 to the key and the finding of the key in that
8 bedroom. Do you recall how that occurred?

9 A. Yes, I do.

10 Q. Why don't you tell the jury how that occurred,
11 please.

12 A. We were concluding the search in the bedroom.
13 We, as Lieutenant Lenk, Sergeant Colborn and I.
14 I was mostly doing the photographing, and logging
15 in and packaging of evidence. However, I did
16 search the nightstand. I was sitting on the bed
17 and the nightstand was right there, so when I had
18 time between my duties, I would search the
19 nightstand. We were just wrapping up the search
20 and Lieutenant Lenk left the room to get some
21 more boxes for some of the things that we were
22 taking into evidence.

23 Sergeant Colborn was searching --
24 finishing up his search of an area on the east
25 wall, next to the bookcase. And I was sitting on

1 the bed near the nightstand. Lieutenant Lenk
2 came back into the room, stopped at the doorway,
3 pointed at the floor, just a couple of feet away
4 from where my feet were sitting on the floor, and
5 said there was a key there.

6 Q. I'm going to show you, just as you describe this,
7 Exhibit No. 210, ask if this image looks familiar
8 to you?

9 A. That's the key, that's where the key was sitting
10 when we found it.

11 Q. How far was this key away from you as you were
12 sitting on the bed?

13 A. Just a couple feet.

14 Q. Had you seen that key, either before Lieutenant
15 Lenk left the room, or at any time actually prior
16 to Lieutenant Lenk's return?

17 A. No, I did not.

18 Q. Now, when Lieutenant Lenk said, there's a key,
19 where was he standing when he said that.

20 A. He was standing in the doorway.

21 Q. Had he gotten to that area yet when he said that?

22 A. No.

23 Q. I'm just going to ask you, Deputy Kucharski, were
24 you surprised to see that on the floor?

25 A. Yes.

1 Q. What happened after you saw that key on the
2 floor?

3 A. Lieutenant Lenk pointed out the key; we all
4 looked at it. We all decided it was a Toyota
5 emblem on it. Stopped all searching. I had
6 everybody stop the searching. Immediately took a
7 photograph of it. I had taken my gloves off to
8 finish up my -- tough to write and take pictures
9 with the rubber gloves on. So I had taken the
10 gloves off, so I put on a fresh pair of gloves. I
11 took out a new evidence bag out of the --

12 Q. Let me just stop you. A fresh pair of gloves,
13 does that mean that it had touched any other
14 pieces of evidence in that room?

15 A. No, it did not. It came directly out of the
16 package.

17 Q. All right. So you put fresh gloves on, what did
18 you do then?

19 A. I took a new evidence bag out of the stack of
20 bags, picked up the key with the -- with my
21 gloved hand, put it into the new evidence bag and
22 then I contacted the Command Post.

23 Q. Deputy Kucharski, the jury has already seen the
24 actual key, itself, but I'm going to show you
25 something that's been marked as Exhibit 219, can

1 you tell us what that is, please.

2 A. That's the key that we found on the 8th.

3 Q. Photograph, isn't it?

4 A. Sorry, that's a photograph of the key.

5 Q. Okay. As you look at No. 219, so we don't have
6 to pass the key itself around, is that one of
7 those evidence pictures that's taken after it's
8 received?

9 A. Correct.

10 Q. You said that you had contacted members of the
11 Command Post; do you recall who came to that
12 location?

13 A. Special Investigator Fassbender and Investigator
14 Wiegert came to the Avery trailer. I showed them
15 the key. They said that they would be sending a
16 special agent back to take custody of the key.

17 Q. All right. The next photo that I'm going to show
18 you, Deputy Kucharski, is photograph number 246;
19 I want you to tell us what that is, please.

20 A. This is a photo of some of the ammunition that we
21 took out of Steven Avery's bedroom.

22 Q. And now that the jury can see Exhibit 246, does
23 it say on the box of ammunition what caliber of
24 ammunition that is?

25 A. Yes, it does. It's .22 long rifle ammunition.

1 what you were asked to do.

2 A. On March 1st and 2nd, I was asked to be the
3 evidence custodian for the search warrant, when
4 it was executed; more particularly, to the garage
5 of the residence of Steven Avery.

6 Q. Directing your attention, first, to March 1st,
7 what were your responsibilities in searching
8 Steven Avery's garage?

9 A. My responsibilities were to collect -- or make
10 sure that the evidence collected in the garage
11 was packaged; had a officer who discovered the --
12 or who had collected the items and had dated
13 that, a date and time that that item was
14 collected; and that all the evidence was taken
15 out of the garage; and made sure that the chain
16 of custody was intact.

17 Q. Do you know a agent with the Division of Criminal
18 Investigation named Kevin Heimerl?

19 A. Yes.

20 Q. Was he also involved in both search and
21 collection efforts on March 1st and 2nd?

22 A. Yes, he was.

23 Q. On March 1st, Investigator Steier, upon a search
24 of the garage of Steven Avery, was any particular
25 item of interest located?

1 A. There were several items that were collected that
2 were of interest. Two of the items were bullet
3 fragments collected inside the garage.

4 Q. These are the bullet fragments that I'm going to
5 ask you, at least for the next several questions,
6 direct your attention on March 1st, that is, the
7 first day of a two day search project or
8 procedure. Could you tell us how that fragment
9 was located and what you personally did after
10 that fragment was located.

11 A. Day 1 of the search warrant, a bullet fragment
12 was located. The item was located by Agent
13 Heimerl and was collected by myself. Day 2 of
14 the search warrant, a second bullet fragment was
15 also located by Agent Heimerl and was collected
16 by Detective Remiker.

17 ATTORNEY BUTING: Judge, just so the record
18 is clear, as to the actions of Agent Heimerl, he's
19 going to be testifying. It would be hearsay, that's
20 why I'm not objecting, because he is coming.

21 THE COURT: All right. Thank you.

22 ATTORNEY KRATZ: He will be our next
23 witness. And thank you, counsel.

24 Q. (By Attorney Kratz)~ I'm showing you what has
25 been marked for identification as Exhibit No. 276

1 and 277, are you able to identify or recognize
2 those exhibits?

3 A. Yes, the exhibit with the plastic bag with
4 initials GS was collected by myself.

5 Q. That's 276?

6 A. That's correct.

7 Q. And was that found on the first day or the second
8 day?

9 A. It was found on March 1st.

10 Q. Okay. Do you remember, generally, within the
11 garage, where that bullet fragment was located?

12 A. Would be in the northwest corner of the garage.

13 Q. I'm going to show you, Investigator, what has
14 been previously received as Exhibit No. 108, ask
15 if this computer diagram assists you in
16 describing to the jury where this bullet fragment
17 was found?

18 A. The evidence photograph marker No. 9.

19 Q. As far as the collection, packaging, and then
20 taking control of that first bullet fragment,
21 could you explain once again, for the jury, who
22 it was that found the fragment, which I'm sure
23 we'll hear about, but, then, who both packaged
24 and took control of?

25 A. The bullet fragment, Exhibit 276, in the paper

1 bag, was located by Agent Heimerl and collected
2 by myself. All the photography, photographs
3 inside the trailer, were done by Agent Heimerl.

4 Q. You mean inside the garage?

5 A. I'm sorry, inside the garage, yes.

6 Q. Just so the jury knows, there was another search
7 going on inside of Mr. Avery's trailer at the
8 same time; is that right?

9 A. That's correct. We were divided into teams, a
10 team of five. We were assigned the garage and a
11 diff -- another team was assigned inside the
12 trailer at the same time.

13 Q. Okay. Now, the next day, that is, on March 2nd,
14 directing your attention to Exhibit No. 277,
15 where was that found?

16 A. That would have been located on the evidence
17 photograph, tent marker 23A.

18 Q. After it's detection, again, which we're going to
19 hear about in just a couple minutes, what
20 happened with that bullet fragment?

21 A. The bullet was turned over to me, from Detective
22 Remiker.

23 Q. After taking custody, I understand on two
24 separate days, but of each of these items of
25 evidence, could you describe for the jury what

1 was done with them; what happened after you
2 retained possession of them?

3 A. The items were packaged or were collected in a
4 package and turned over to me and then evidence
5 tape surrounding the package was placed on the
6 item collected. And then from there, the items
7 were transported to a trailer, which was housing
8 the other items that were collected from the
9 same.

10 ATTORNEY KRATZ: I think it's 125,
11 Mr. Fallon.

12 Q. (By Attorney Kratz)~ Finally, Investigator
13 Steier, were you familiar with a log, that is, a
14 check in and check out procedure or document that
15 was being utilized on those days?

16 A. I was aware that there was a log being taken of
17 our entry and exit times in and out of the garage
18 and the surrounding area.

19 Q. Now, the garage and the surrounding area, are
20 those the same logs or the same kind of place?

21 A. Day 1, the log reflected inside the trailer --
22 inside -- I'm sorry, inside the garage. Day 2,
23 reflected the garage and the evidence tape, which
24 was just outside the garage.

25 Q. All right. Either on March 1st or March 2nd, had